



Briefing Update: The Yorm Bopha Case

April 23, 2013 – There has been some recent confusion surrounding the criminal case against Boeung Kak community activist Yorm Bopha. The muddling of the facts causing this confusion has been no accident – it reflects an intentional campaign by the authorities, complete with plausible allegations of payments to counter-protestors and even a disturbing weighing-in by the Prime Minister himself. In reality the facts underlying Bopha’s unwarranted conviction are simple, and reveal beyond any doubt that the authorities have targeted her to create fear and self-censorship among the remaining active members of the beleaguered Boeung Kak community.



The undisputed facts of the event leading to the charges against Bopha are as follows: two men were drinking rice wine for hours at a drink shop in Boeung Kak. Shortly after dark, there was a fight during which the two men were injured. Yorm Bopha and her husband arrived at the drink shop after the fight broke out, and watched from outside together with other bystanders. One of the men had previously been accused of repeatedly stealing car mirrors from residents in the area, and Bopha had informed the police that her mirrors had been stolen repeatedly. She did not accuse any specific individual of the thefts, however, contrary to multiple inaccurate reports.

The undisputed background about Yorm Bopha is similarly straightforward. Last May, 13 female members of the Boeung Kak community were rounded up during a peaceful protest on the sand-filled site of some of their neighbors’ former homes. Yorm Bopha stepped up to maintain the community’s advocacy efforts while the 13 women were imprisoned. This courage did not go unnoticed by the authorities. She was immediately threatened, harassed and intimidated. Police blatantly told her that she was “on the blacklist,” and that she would be “in trouble soon.”

The opportunity arose when she and her husband, Lous Sakorm, happened to be chatting with a neighbor one evening when the fight arose nearby. Bopha’s two brothers, Yorm Kamhong and Yorm Seth, were accused of either taking part in or instigating that fight. Bopha and her husband, however, had done nothing more than walk over to the scene of the fighting to see what was happening.

The trial took place over the course of nearly five hours on December 26, with both brothers absent. The prosecution’s theory appeared to be that Yorm Bopha and her husband had masterminded an assault on two men sitting in a drink shop and had then showed up to witness their plan in action.

Not one witness was present in court to testify to this premeditated plot theory, which appeared to hinge entirely on the fact that the two accused assailants, who were absent from court, were related to Bopha. Rather, the two men injured in the fighting testified about the events of the afternoon in question, and two others (one of the men’s fathers and another supposed bystander), testified about what they witnessed upon arriving at the scene after the fighting broke out. Again, not one person testified to any fact showing that any of the defendants had plotted to attack the men prior to the day in question. The prosecutors did not even attempt to prove this point, except perhaps for a tediously over-hashed and irrelevant discussion about when Bopha and her husband had last seen Bopha’s brothers.



Yorm Bopha meets with her son following her hearing at the Supreme Court on March 27, 2013.

There were also multiple significant inconsistencies in the prosecution witnesses' testimonies – particularly between their courtroom testimonies and their written statements in the case file. The contradictions ranged from discrepancies between when the two men in the shop arrived, to when Bopha and her husband arrived, to who initiated the fighting and how. On the other hand, there was also remarkable uniformity in the witnesses' testimony in court with respect to certain largely irrelevant details. For example, they all made a point of stating that the assault weapon used (purportedly a screwdriver) had a blue handle – even where making this point was bizarrely out of place, and not in response to any question. Every witness also stated confidently and repeatedly that the fight started at 7:10 p.m. exactly, despite the two civil parties admitting to having been drinking rice wine for hours, and the two other witnesses claiming to have arrived

only after the fight started.

More importantly, every single witness stated that Yorm Bopha and her husband had not been violent themselves, had been present only after the fight had broken out, and were only outside the drink shop. Yorm Bopha and her husband testified that they had been nearby chatting with a neighbor and had come over to the drink shop after hearing yelling. The neighbor corroborated this testimony.

Procedural discrepancies are also worth mentioning. As noted above, the two primary witnesses against Bopha and her husband were the alleged victims themselves. The pair are also civil parties in the case, and seeking substantial compensation. As such, the Criminal Code of Procedure allows for them remain in the courtroom throughout the trial. Ordinarily, though, witnesses in criminal cases are required to remain outside the courtroom when other witnesses are testifying, so that they do not change their testimony to be consistent with others. It is unclear how these rights can be reconciled to preserve the fairness of the criminal proceeding. Nor is it clear how the Criminal Code of Procedure's provision forbidding civil parties from giving witness testimony can be applied in such situations. (See article 312: "A civil party may never be heard as a witness.") If a civil party testifies but is not under oath, that testimony should arguably not amount to credible evidence.

Practically speaking, in Bopha's case this meant that the two victims were able to listen carefully to each other's testimony before giving their own versions of the events. It was thus no surprise that certain facts were repeated even when the repetition made no sense. The impropriety of allowing the men to stay and listen to each other was also clear whenever one of them was asked a question that had not been posed to the other. The man testifying would look back at his co-civil party, as if to ask "what were we supposed to say about this point?"

Also of note, Bopha and her husband were not charged with any of the criminal provisions allowing for vicarious liability. In other words, they were not charged as accomplices or conspirators, but rather as the perpetrators of violence themselves. The testimony in court, as well as the Prosecutor's arguments, showed that neither could be guilty of committing that offense – nobody ever accused either of actually assaulting anyone. And in any event, theories of vicarious liability require a great deal more evidence than simply showing that others accused of a crime were blood relations.

Despite these and numerous other inconsistencies, on December 27, 2012, all four defendants were convicted of intentional violence with aggravating circumstances under article 218 of the Penal Code and



sentenced to three years in prison. Between them, the four were also ordered to pay 30 million riel (approximately US\$7,500) in compensation to each victim (US\$15,000 total). In yet another clear indication that the case was entirely manufactured to target Bopha, her husband's sentence was suspended and he was released shortly after the trial.

Bopha, who has been named an Amnesty International Prisoner of Conscience, has now been in prison since September 4, 2012. Her appeal has not yet been scheduled, and the Supreme Court denied her request for release pending the appeal.

LICADHO urges the Appeal Court to consider the arguments presented above and the wholesale lack of credible evidence, and overturn the lower court's verdict.